

**Rekha Vs. Mcd and ors.**

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**Court :** Delhi

**Decided On :** May-31-2007

**Reported in :** 142(2007)DLT608

**Judge :** Hima Kohli, J.

**Acts :** Delhi Municipal Corporation Act - Sections 98 and 480(1); [Payment of Gratuity Act, 1972](#); Allotment of Government Residences (General Pool in Delhi) Rules, 1963; Government Accommodation Rules; Delhi Municipal Corporation (Allotment of Municipal Residences) Regulations, 1971

**Appeal No. :** Writ Petition (C) No. 6424/2006

**Appellant :** Rekha

**Respondent :** Mcd and ors.

**Advocate for Def. :** Smita Shankar, Adv.

**Advocate for Pet/Ap. :** Sanjay Jain, Sr. Adv. and; Jasbir Singh, Adv

**Disposition :** Petition allowed

**Judgement :**

**Hima Kohli, J.**

1. By way of the present petition, the petitioner prays for issuance of a writ of certiorari for quashing the allotment letter dated 5th, April, 2006 issued by the respondent No. 1, Municipal Corporation of Delhi (hereinafter referred to as 'the MCD') to the respondent No. 2 as also for quashing of the letter dated 10th April, 2006 by which the earlier allotment letter dated 14.6.2005, issued to the petitioner by the respondent corporation, in respect of the same Government accommodation bearing No. D-1/6, 10 Rajpur Road, Delhi, was cancelled. The petitioner has also prayed for directions to the MCD to allot and handover possession of the aforementioned accommodation to her.

2. A brief narration of the relevant facts of the present case is necessary. The admitted position is that the petitioner is working as the Chief Medical Officer with the MCD. Vide allotment letter dated 14.6.2005, the petitioner was allotted a Type-V Flat bearing No. D-1/6, 10, Rajpur Road, Delhi (hereinafter referred to as 'the said flat'), situated on the ground floor, on medical grounds of her husband. Contemporaneously, the respondent No. 3, working as the Head of the department of Paediatrics, Hindu Rao Hospital, who was due to retire on 30th April, 2006, applied to the MCD for regularization and allotment of the aforesaid flat which was in her occupation, in favor of her daughter-in-law, i.e., respondent No. 2, also a doctor posted in Hindu Rao Hospital. The said request made by the respondent No. 3 was turned down by the MCD. In the beginning of the year 2006 itself, the respondents Nos. 2 and 3 again applied for regularization of the said flat in favor of respondent No. 2, which request was again turned down by the MCD on the ground that the pay-scale of the respondent No. 2. was Rs. 8,750/- and thus she was entitled only to a Type-III flat and not to a Type-V flat. However, on 8.3.2006, the case of the respondents Nos. 2 and 3 was taken up suo motu by the MCD and on the grounds of the medical condition of the respondent No. 3.'s daughter, sister-in-law of the respondent No. 2, the MCD allotted and regularized the said flat in favor of the respondent No. 2, vide order dated 8th March, 2006, followed by an allotment letter dated 5.4.2006. Thereafter, the petitioner was served with a letter dated 10th April, 2006 by the MCD, withdrawing the earlier allotment letter issued to her on 14th June, 2005, in respect of the same flat.

3. Considering the fact that the plea of the petitioner is that the aforesaid action of the MCD in allotting a Type-V flat to the respondent No. 2 beyond her entitlement and on an out of turn basis and cancelling the allotment made in her favor, behind her back, is contrary to the applicable Rules and Regulations, it is relevant to take note of the relevant Rules for the purposes of allotment of government accommodation to Municipal employees. For the said purpose, the MCD has adopted the Fundamental Rules and Supplementary Rules as applicable to the Central Government Employees. Initially, based on the provisions as contained in Allotment of Government Residences (General Pool in Delhi) Rules 1963, The Delhi Municipal Corporation (Allotment of Municipal Residences) Regulations, 1971 were framed under Section 98(c) read with Section 480(1) of the Delhi Municipal Corporation Act for application in the general wing of the Corporation. Also, the amendments as effected in the Allotment of Government Residences (General Pool in Delhi) Rules 1963 (hereinafter referred to as 'the Rules'), as amended from time to time are applied mutates mutants by the MCD to its employees.

4. Learned Senior Advocate arguing on behalf of the petitioner placed reliance on S.R.317-B-8A of the Rules to state that the said Rule was inserted in the year 2001, in compliance with the guidelines laid down by the Supreme Court in the case of S.S. Tiwari v. Union of India : AIR 1997 SC2725 , which was a public interest litigation filed against the large number of out-of-turn allotments made by the Government. Accordingly, the matter was considered by the Government and it was resolved that any such out-of-turn allotments shall be permitted only on medical, security and functional grounds. It was submitted on behalf of the petitioner that such allotments were to qualify at two stages, first stage being when a Committee constituted for the said purpose should approve of such allotment and the second stage being that as per the requirement of S.R.317-B-8A, a person could only be allotted an accommodation that is one type below the accommodation to which he is entitled.

5. Thus it was argued that since in the present case, at the relevant time, the respondent No. 2. was entitled to a Type-III accommodation, even if she had been considered and found fit by the MCD for an out-of-turn allotment on account of the

health grounds of her sister-in-law, she could be allotted only a Type-II accommodation, i.e. one type below the accommodation to which she was actually entitled and that the arbitrariness of the MCD is writ large from its act of having allotted to her instead, the said Type-V Flat, which is 3 Types higher, in flagrant violation of the applicable Rules.

6. The second premise on which the petitioner sought to build her case was that the entire action of the MCD in having rejected the application of the respondent No. 3. for regularization of the said flat in the name of the respondent No. 2 on two previous occasions, but allowing the same on the third occasion, smacks of arbitrariness on the part of the MCD. Reliance was placed on the file nothings dated 10th June, 2005 and 20th February, 2006 of the MCD, wherein the applications of the respondents No. 2 and 3, for regularization of the said flat in favor of respondent No. 2 were rejected. Attention of the Court was also drawn to the letter of the respondent No. 2. dated 7th February, 2006, by which she applied for regularization of the said flat in her favor, to state that there was not a whisper therein about the health condition of her sister-in-law. The nothings of the respondent/MCD dated 8th March, 2006, by which the request of the respondents was allowed, were also adverted to and the action of the MCD was questioned on the ground that even in the absence of any health grounds taken by the respondent No. 2 in her letter dated 7th February, 2006 and in spite of the earlier applications having been rejected twice over, how could the flat be regularized in favor of respondent No. 2 on suo motu reconsideration of the respondents' case, for a third time, on the same grounds as were available earlier. It was stated that the MCD by making nothings in the file cannot be permitted to annihilate the procedure of laws and the boundaries defined by the Rules and that the action of the MCD, insofar as the same is in violation of the said Rules, is liable to be quashed by this Court. It was further argued that the petitioner was not afforded any opportunity of hearing before cancelling the allotment made in her favor vide letter dated 14th June, 2005, and as the same amounted to violation of the principles of natural justice, on this ground alone, the entire action of the MCD is vitiated.

7. nothings dated 8th March, 2006, were relied upon to contend that the respondent No. 2, would have at the maximum, become entitled for a Type-IV accommodation and that too w.e.f. 1st September, 2006 and even after having got so entitled, she could have only been allotted a Type-III accommodation, while being granted an out-of turn allotment in view of the provisions of S.R.317-B-8A. It was further contended that even on 1st September, 2006 there were 3 Type- IV flats lying vacant in the same locality where the said flat is located, and if the MCD wanted to give consideration to the respondents No. 2 and 3, it could have easily allotted to the respondent No. 2, at least one of the three vacant Type-IV flats.

8. In reply to the averments of the petitioner, learned Counsel for the MCD referred to the letter of allotment dated 14th June, 2005 issued to the petitioner to state that the letter of allotment was conditional on the said flat being vacated. As the flat was allotted to and was under the occupation of the respondents No. 2 and 3 at the relevant time, the allotment was subject to vacation by the said respondents. Thus, merely by issue of such an allotment letter, no vested rights got created in favor of the petitioner.

9. Counsel for the MCD averred that contrary to the submissions of the counsel for the petitioner, SR 317-B-8A was not at all applicable to the case of the respondents No. 2 and 3 because it was not a case of an out-of-turn allotment, but a case of regularization of the said flat in favor of the respondent No. 2. Reliance was instead placed on S.R. 317-B-25 to state that the Commissioner of MCD, has the powers to relax any of the rules for reasons to be recorded in writing, and that such discretion vested with the Commissioner of MCD has been rightly exercised in the present case, having taken into consideration the medical condition of the sister-in-law of respondent No. 2. It was also pointed out that the respondent No. 2, was called upon to pay license fee three times the normal license fee for the occupation of the said flat, which was regularized in her favor on compassionate grounds and thus no rule or norm had been flouted by the MCD.

10. It was further contented on behalf of the MCD that the respondent No. 3 who was due to retire on 30th April, 2006, could retain the said flat for occupation till 30th August, 2006 as per the Rules and in view of the fact that the respondent No.

2 became entitled to allotment of a Type-IV accommodation on 1st September, 2006, coupled with the medical condition of the sister-in-law of the respondent No. 2, the Commissioner, MCD in exercise of his administrative powers, relaxed the rules in regularizing the said flat in favor of the respondent No. 2. It was further argued that since the powers exercised by the Commissioner were strictly in the realm of an administrative order and the powers were not exercised in a quasi-judicial capacity, therefore it is not a fit case for this Court to exercise its powers of judicial review.

11. Counsel for the respondents No. 2 and 3 supported the submissions made on behalf of the MCD, and supplemented the same by emphasizing the special medical condition of the sister-in-law of the respondent No. 2 to bring home the fact that the discretion exercised by the MCD in relaxing the rules in favor of the respondent Nos. 2 and 3 was not without a sound basis. It was also stated that the order of the Commissioner fulfilled all requirements of a proper administrative order, i.e., the Commissioner had acted within the purview of his powers, such powers were exercised keeping in view the relevant considerations and it was well-reasoned. On the issue of violation of principles of natural justice, it was submitted that this is not a fit case for granting a pre-decisional hearing to the petitioner, as she did not have any vested rights in the said flat by virtue of the allotment letter dated 14th June, 2005 in her favor, since the letter itself stated that allotment was subject to vacation. Reliance was placed on the following judgments of this Court to state that the court ought not to go behind the administrative orders unless the same are illegal, arbitrary or have been passed in violation of the principles of natural justice:

(i) Ramesh Kumar v. Punjab National Bank reported as 140 (2007) DLT 417; and

(ii) Zameer Ahmed v. Appellate Authority, Under [Payment of Gratuity Act, 1972](#) and Anr. reported as : (2007)IIILLJ103Del

12. Having heard the learned Counsels for the parties, before embarking on the task of determining the merits and demerits of the arguments addressed, it is necessary to catalogue the relevant applicable rules. As already noticed above, for the purposes of allotment, the employees of MCD are not only governed by the

DMC (Allotment of Municipal Residences) Regulations, 1971 framed under Section 98(c) read with 480(1) of the DMC Act, also by the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 as amended from time to time.

13. SR-317-B-8-A, which was inserted by the Government of India, Ministry of Urban Development and Poverty Alleviation on 29th June, 2001, published and given effect to in the Gazette of India on 13th July, 2001, states as below:

SR 317-B-8A. Out of turn Allotment - Notwithstanding the provisions of SR-317-B-7 (accommodation of one type below the entitled category) -

(a) not exceeding three units in the case of personal staff attached to the Cabinet Minister,

(b) not exceeding two units in the case of Minister of State,

(c) not exceeding three units in the case of personal staff attached to the Deputy Chairman, Planning Commission.

may be allotted immediately on out of turn basis, if the exigencies of duties so demand.

14. The aforesaid Rule is also relevant as the Government of India's Orders issued under the OM dated 17.11.1997 took into consideration SR 317-B-25, whereunder the Government, for reasons to be recorded in writing, can relax all or any provisions of the allotment rules in case of any officer or residence or class of officers or type of residences, and went on to state that in view of the increasingly large number of out of turn allotment, the Supreme Court of India in its judgment rendered in the case of S.S. Tiwari (supra), directed the Government that discretionary out of turn allotments be regulated and transparency maintained by framing appropriate rules in this regard to be duly notified. After taking note of the aforesaid directions of the Supreme Court, the OM laid down detailed guidelines to regulate discretionary allotment of Government accommodation by considering the Government officials only on medical, security and functional grounds. It was decided that such allotments shall be made through two committees of officers

duly constituted for the said purpose which were required to consider each request within the laid down policy guidelines. After detailing the composition of the two committees, the procedures/guidelines were prescribed and Clause 3 (ii) of the said procedures/guidelines stipulated in the aforesaid OM states as below:

3. Procedures/Guidelines to be followed:

(ii) The committee shall consider discretionary allotments in the next below type of the entitlement of the officials concerned

15. Reference was also made by the MCD to Resolution No. 946 dated 14.3.1972 which deals with the interpretation of the DMC (Allotment of Municipal Residences) Regulations and for the purposes of interpretation of the regulations and relaxation thereof, states as below:

Interpretation of Regulations : If any question arises as to the interpretation of the regulations, it shall be decided by the Commissioner. Relaxation of Regulations : The Commissioner may for reasons to be recorded in writing, relax all or any of the provisions or the regulation in the case of any officer or residence or class or officers or type of residence. Delegation of powers or functions : The Commissioner may delegate any or all the powers conferred upon it by the regulation to any officer under its control, subject to such conditions as it may deem fit to impose.

16. It is pertinent to note herein that the aforesaid relaxation of regulations is analogous to the provisions of SR 317-B-25, which states as below:

SR 317-B-25 - The Government may, for reasons to be recorded in writing, relax all or any of the provisions of the rules in this Division in the case of any officer or residence or class of officers or type of residences.

17. A reference to the orders contained in OMs dated 1st May, 1981 as also 19th November, 1987 is relevant. In the said OMs, which deal with the allotment of Government quarters to dependents/relations of Government employees on their retirement, it is stipulated that when a Government servant in occupation of a Government residence retires from service, his/her son, unmarried daughter, wife

or husband, married daughter and daughter-in-law, as the case may be, may be allotted Government residential quarters on ad hoc basis, subject to certain conditions including the condition that he/she should have been residing continuously with the retiring Government servant for at least 3 years immediately preceding the date of retirement of the said Government servant and during the same period of 3 years, he/she should not have been drawing House Rent Allowance (for short 'HRA'). It is further stipulated in para 7 of the said OM as below:

7. The eligible dependent/relation will be allotted Government residence one type below his entitlement, provided that in no case allotment will be made to a higher type of quarter than in occupation of the retiring Government servant except in the case of an eligible dependent/relation who will be allotted accommodation in Type-B on ad hoc basis even though he is entitled to Type B or any higher accommodation, despite the fact that the retiring Government servant was occupying Type A accommodation. Ad hoc allotment of lower type of accommodation is to be restricted to the same area or adjoining area where retired official is having the accommodation. However, license fee/damages will have to be paid by the retired official, if there is any delay in allotment of alternative accommodation due to restriction of allotment to such colony.

18. Reference is also necessary to OM dated 13.10.2003 issued by the Government of India with regard to license fee in case of allotment of higher accommodation. The relevant Clause is reproduced hereinbelow:

license fee in case of allotment of higher accommodation - If a Government servant is allotted quarters of a type higher than his entitlement at his own request, flat rate of license fee relevant to that type of accommodation will be charged if such type of quarters is available surplus. If such allotment is made despite there being no surplus quarters in that type, three times the flat rate of license fee will be charged; Government servants entitled for rent-free accommodation if allotted an accommodation of a type higher than their entitlement on their request will be charged twice the flat rate.

19. Considering the import of the aforesaid relevant Rules, Regulations and office orders collectively, the position that emerges is that an applicant who is a family member of a Government servant in occupation of a Government residence, and has resided continuously with the latter for a period of 3 years immediately preceding the date of retirement of the Government servant, during which period he/she should also not have been drawing HRA, then the request of the applicant for the purpose of being granted discretionary/out of turn allotment on medical, security or functional grounds, is required to be made to the committee of officers constituted for the said purpose. The committee can only consider discretionary allotments in the next below type of entitlement of the officer concerned and that in no case, the allotment shall be made to a higher type of quarter than in occupation of the retiring Government servant.

20. Now, coming to the facts of the present case, admittedly, the said flat was under the occupation of the respondent No. 3, who was due to retire on 30th April, 2006. It is also not disputed that while the flat was still under the occupation of the aforesaid allottee, the respondent No. 1/MCD allotted the same flat to the petitioner, vide allotment letter dated 14.6.2005 on the expectation of receiving vacant possession of the said flat upon the retirement of the respondent No. 3. The request of the respondent No. 3 for allotment of the same flat in favor of the respondent No. 2 was duly considered and turned down by the respondent No. 1/MCD in June, 2005 itself on the following grounds:

Kindly refer to the request of Dr. Kamla Sharma, Sr. Spl. HRH, regarding regularization of her allotment mpl. Accommodation bearing No. D 1/6 (Type -V) at 10 Rajpur Road, in the name of her daughter in law, Dr. Jasmine Chawla Sharma, Dr. Kamla Sharma is going to retire from mpl services on 30.4.2006.

Under the existing Rules, for regularization of allotted accommodation, in the name of daughter in law, only entitled type of accommodation can be considered and that too on payment of normal license fees.

In the instant case, the successor allottee daughter in law, is an appointee of 13.9.02 and drawing B.P. of Rs. 8750/- which entitles her for Type III accommodation only.

In view of the above and in the light of the existing Rules, the request of Dr. Kamla Sharma, cannot be considered.

21. It is not out of place to note that when the aforesaid request was considered, there was no ground taken with regard to the medical condition of the daughter of the respondent No. 3. Only later on, in January, 2006, the respondent No. 3, who was going to retire on 30th April, 2006, requested for transfer of accommodation in favor of the respondent No. 2 on the ground of medical condition of her daughter. However, no such request for allotment on compassionate basis finds mention in the letter of the proposed allottee, namely, the respondent No. 2, as is apparent from a perusal of the letter dated 7.2.2006 addressed by her to the respondent No. 1/MCD.

22. The aforesaid representations were duly considered by the respondent No. 1/MCD and the Additional Commissioner (General) MCD, vide noting dated 20.2.2006, and turned down their plea with the following observations : The matter has been discussed with ADC (L and E) today. He has referred to provisions regarding regularization/allotment of Government accommodation to the daughter-in-law of the allottee under Government Accommodation Rules (Extracts placed opposite), according to which, earlier the daughter-in-laws were not eligible for regularization of the government Accommodation after the retirement of the allottee. However, subsequently, it was decided to regularize/allot accommodation in such cases only as per entitlement. During discussion, it has been revealed that Dr. Jasmine Chawla Sharma, who is daughter-in-law the present allottee, Dr. Kamla Sharma is drawing basic pay of Rs. 8750/- only which entitles her to a type-III accommodation.

Under the circumstances, it will not be possible to regularize flat No. D- 1/6, 10, Rajpur Road in favor of Dr. Jamine Chawla Sharma. However, the department may propose a type-III ground floor accommodation immediately which can be allotted to her on humanitarian grounds in view of paralytic condition of unmarried daughter of Dr. Kamla Sharma.

Dr. Kamla Sharma may be informed about the decision immediately.

23. The aforesaid decision was duly conveyed by the respondent No. 1/MCD to the respondent No. 2, vide letter dated 20.2.2006 and the matter rested there.

24. However, in the very next month, the Additional Deputy Commissioner, MCD suo motu initiated a note dated 8.3.2006 with reference to a meeting held with the Commissioner, MCD on 29.2.2006, i.e. within two weeks of the rejection of the representations of the respondents No. 2 and 3, wherein it was recorded that:

When I met the Commissioner on dated 28.2.2006, the matter regarding regularization of Mpl flat No. D-1/6 (Type-V) at 10 Rajpur Road in the name of Dr. Jasmine Chawla Sharma, Daughter-in-law of present allottee Dr. Kamla Sharma, was discussed. Dr. Kamla Sharma is going to retire from mpl services on 30.4.2006. It was desired by the Commissioner to put up the case for regularization of the mpl flat in question, in favor of the daughter-in-law of Dr. Kamla Sharma. The facts of the case are as under:

Dr. Kamla Sharma is an allottee of mpl flat No. D-1/6, T-V at 10 Rajpur Road. She is going to retire from mpl services on 30.4.2006 and wants to get regularized the same flat in the name of her daughter in law Dr. Jasmine Chawla Sharma who is also employed with MCD since 3.9.2002 at Hindu Rao Hospital as GDMO-I and drawing BP of Rs. 8750/- pm. Dr. Jasmine Chawla Sharma is sharing the mpl accommodation and not drawing HRA since her appointment in MCD. The daughter of Dr. Kamla Sharma is paralytic up to 90% and not in a position to move herself. She needs proper care and regular attention. She is under treatment at Hindu Rao Hospital which is very much near to her present accommodation. therefore, she wants to get the same regularized in the name of her daughter-in-law, Dr. Jasmine Chawla Sharma. Under the existing Rules, the successor allottee should reside with the retiring allottee for the last three years and should not have drawn HRA for the last three years. Besides the successor allottee should be eligible for the allotted type of accommodation. In this case, Dr. Jasmine Chawla Sharma fulfill the rest of the condition except the eligibility condition. At present, she is entitled for T-III accommodation only but on dated 01.9.2006, she will be eligible for T-IV accommodation and till 31.8.2006 the present allottee Dr. Kamla Sharma can retain the same under the Rules.

In this regard, I also brought this fact to the notice of the Commissioner that under order of the then Commissioner, this flat has already been allotted to Dr. Rekha, CMO but it was desired by the Commissioner that on humanitarian ground and keeping in mind the paralytic condition of daughter of Dr. Kamla Sharma, her request may be considered.

Accordingly, the formal approval of the Commissioner may please be taken in this regard to regularize the mpl accommodation No. -D-I/6, T-V, at 10 Rajpur Road in the name of her daughter-in-law Dr. Jasmine Chawla Sharma on payment of three times of normal SLF and Dr. Rekha CMO may also be allowed to continue with her present accommodation bearing No. D-II/4, T-IV, at 14 Rajpur Road, please.

25. Approval to the aforesaid note was granted by the Commissioner, MCD on 14.3.2006. Immediately thereafter, an allotment letter dated 5.4.2006 was issued in respect of the said flat to the respondent No. 2 and about a week thereafter, the petitioner was informed for the first time about the cancellation of her allotment to the said flat.

26. There is no quarrel with the position that the respondents No. 2 and 3 required consideration on compassionate basis for an out of turn allotment in view of the medical condition of the sister-in-law of the respondent No. 2. There is also no doubt that discretion vested with the Competent Authority to relax any of the provisions of the rules for allotment of Municipal accommodation. However, as is the settled law, such a discretion has to be exercised within and not beyond the parameters of the extant Rules applicable in the case of out of turn allotments. If the Rules and Office Memorandums envisage an out of turn allotment on medical grounds only in the next below type of entitlement of the officer concerned, the MCD cannot be heard to say that its decision to grant allotment to the respondent No. 2, in two Types higher accommodation is justified. Hence, the illegality and arbitrariness on the part of the MCD lay not in exercising the discretion vested in the Commissioner, MCD, but exercising such discretion in a manner which was contrary to the applicable Rules. A perusal of the last note which forms the basis of allotment in favor of respondent No. 2 shows that the MCD threw the Rules to the winds to give an out of turn allotment of the said flat to her. This is neither

permissible nor justified, more so when in the process of exercising such discretion, the MCD violated a valuable right of the petitioner, who was deprived of an allotment made in her favor, without even being afforded an opportunity of hearing.

27. The distinction sought to be drawn by the respondent No. 1 between a case of an out of turn allotment and a case of regularization is meaningless as except for the Rules and O.M.'s already indicated hereinabove, there are no separate rules which govern cases of regularization. Thus, the respondent No. 1/MCD, upon accepting the case of the respondents No. 2 and 3 for relaxation of the Rules could have at best granted to respondent No. 2, a Type-II accommodation on an out of turn basis, being the next below type of entitlement for the reason that as on 8.3.2006, the date of the impugned noting, the respondent No. 2 fulfilled the relevant eligibility conditions for being allotted only a Type-III accommodation. However, the respondent No. 1/MCD on the date of approving the allotment of the flat in question in favor of the respondent No. 2 on humanitarian grounds, ignored her eligibility position as on the said date. Instead, the future position was taken into consideration by the MCD for granting out of turn allotment by observing that the respondent No. 3 was to retire on 30th April, 2006 and that as per law, she would have been eligible to retain the accommodation in her occupation for a period of four months, taking the date of expected vacation to 31st August, 2006, which conveniently coincided with the date on which the respondent No. 2 would become eligible for entitlement to a Type-IV accommodation, thus overcoming the eligibility bar as it stood in March, 2006. This circuitous manner adopted by the MCD by taking into consideration future events for the purposes of making an out of turn allotment, is patently illegal and contrary to the applicable Rules and the settled norms and procedures. The same neither reflects proper and judicious application of mind, nor shows valid exercise of discretion on the part of the respondent No. 1.

28. The sole consideration and the basis for issuing the note dated 8.3.2006, appears to have been motivated with the objective of satisfying 'the desire of the Commissioner, MCD' willy nilly for regularizing the flat in question in favor of the respondents No. 2 and 3 by misapplying as also ignoring the extant rules.

29. Reliance was placed by the respondent No. 1 on a clause in the Office Memorandum dated 13th October, 2003 to claim that as the respondent No. 2 was called upon to pay three times of flat rate of license fee for the purposes of regularization of the flat in question in her favor, the action of the MCD could not be stated to be either arbitrary, or illegal. A perusal of the relevant clause reproduced hereinabove makes it evident that the said Office Memorandum refers to allotment of quarters 'a Type higher than the entitlement at his own request'. In the face of the provisions of SR 317 B-8A and the Office Memorandum dated 1.5.1981, which entitles the respondent No. 2 to an out of turn allotment on medical grounds for one Type below her entitlement, the MCD proceeded to allot to respondent No. 2, government accommodation not one Type higher, but two Types higher than her entitlement. thereforee, calling upon the respondent No. 2 to pay three times of the flat rate of license fee for regularizing the said said flat in her favor, cannot cure the patently illegal allotment made in her favor. OM dated 13.10.2003 does not envisage regularization of allotment by payment of three times of flat rate of license fee if the allotment is made not a Type higher, but two Types higher than entitlement, as in the present case.

30. As on 8.3.2006, when the impugned order was passed, the respondent No. 2 had not completed three years of service and thus she could have at the maximum, become entitled to a Type-III accommodation. However, for an out of turn allotment, she would have become entitled only to a Type-II accommodation in the next below category in accordance with the Rules. Now, taking the case of the respondent No. 2, as it stood on 1st September, 2006, when she completed 3 years of service, even then she would have been eligible to a Type-IV accommodation in normal course and a Type-III accommodation for an out of turn allotment. In any event, she could not have become entitled to a Type-V accommodation on an out of turn basis on medical grounds. Thus the allotment in favor of respondent No. 2 can only be described as an order in anticipation of events that had yet to occur, by misapplication of the extant Rules.

31. It is also relevant to note that on the first date of hearing in the present case, i.e. on 28.4.2006, counsel for the respondent No. 1, who appeared on advance notice, was directed to file a counter affidavit and disclose therein whether any

employee of MCD can be granted allotment higher than his/her entitlement on humanitarian considerations and also whether the respondents No. 2 and 3 can be granted allotment in an appropriate Type-IV quarter on the ground floor in the same locality in alternative to the impugned allotment.

32. A counter affidavit was filed by the MCD. However, upon perusing the same, vide order dated 26.5.2006, the Court was compelled to observe that the details sought for had been omitted by the MCD and instead, the counsel for the MCD stated that possession of the said flat was handed over to the respondent No. 2 on 1.5.2006, despite the fact that the court had been assured that the possession of the flat would not be handed over in the interregnum in view of the pendency of the writ petition. Holding the conduct of the respondent No. 1 as bordering on contempt, the deponent of the affidavit, who was the Additional Deputy Commissioner, Land and Estate, MCD was directed to be present in the Court on the next date of hearing along with the relevant records. The unseemly haste shown on the part of the MCD in handing over the possession of the said flat to respondent No. 2, even during the pendency of the present proceedings and in the teeth of an assurance given to the court that no such step shall be taken by the MCD, can only be treated as an attempt to overreach the court and it speaks volumes about the conduct of the MCD.

33. By disregarding the relevant Rules and Regulations the MCD has shown scant regard for law and sought to negate the very object of the framing the guidelines and the Rules for the purposes of housing accommodation, pursuant to the directions passed by the Supreme Court in the case of S.S. Tiwari (supra) calling upon the Government to streamline the entire process so as to maintain transparency. In its attempt to relax the norms of allotment for the respondents No. 2 and 3 on humanitarian grounds, the MCD has caused injustice to the petitioner. Further, the arguments advanced by the MCD that as the letter of allotment in favor of the petitioner was subject to vacation of flat and the vacation did not take place, thus, it was only a conditional offer which could be withdrawn at any time, amounts to rubbing salt in the wounds of the petitioner. In the opinion of the Court, no such plea is available to the MCD as it is itself responsible for frustrating the allotment letter issued in favor of the petitioner by making an illegal out of turn

allotment in favor of the respondent No. 2.

34. The petitioner has been able to amply demonstrate that the MCD not only failed to adhere to the Rules and Regulations prescribed for the purpose of out of turn allotment, but went out of the way to allot the said flat to the respondents No. 2 and 3. The petitioner has a valid grievance that the allotment made in her favor could not be cancelled in such a cavalier fashion, behind her back and without affording her an opportunity of hearing, or even offering her an alternative Type-V accommodation in the same locality, in lieu of the cancellation made.

35. While taking note of the above position, the Court cannot lose sight of the fact that admittedly there exists a genuine need of the respondents No. 2 and 3 for being granted accommodation on the ground floor, in view of the paralytic condition of the daughter of the respondent No. 3, for which purpose the rules for out of turn allotment could have been relaxed and accommodation could have been granted by the MCD in favor of the respondent No. 2, but within the framework of the Rules, which would entitle the respondent No. 2 to only a Type-IV category flat and not a Type-V category flat.

36. It is relevant to note that in para 8 of the writ petition, the petitioner specifically mentioned details of three Type-IV flats on the ground floor, in the same area i.e. Rajpur Road which were lying vacant in March, 2006 and could have easily been allotted to the respondent No. 2 thus setting at rest the entire controversy. However, in its return, the MCD sidelined the said issue and intentionally omitted to give a specific reply either admitting or denying the aforesaid averments, thus inviting adverse comment from the court. In the course of arguments, when necessary clarifications were sought, it was admitted for the first time by the MCD that the aforesaid averments of the petitioner were correct and that in the month March, 2006, three Type-IV flats on the ground floor as stated in the writ petition, were readily available for allotment in the same locality.

37. The MCD was called upon to furnish to this Court the present position of the flats available in the same area as also in the neighbouring vicinity on the ground floor in the category of Type-V as well as Type-IV. Pursuant thereto, a statement was filed by the MCD which shows that there are no Type-V flats available for

allotment, except for the flat in question. However, there are two vacant Type-IV flats on the ground floor at 10, Rajpur Road available for allotment, i.e. in the very same locality where the said flat exists.

38. In these circumstances, it is only just, fit and appropriate that while quashing the allotment letter dated 5.4.2006, issued by the respondent No. 1/MCD in favor of the respondent No. 2, as also the consequent letter dated 10.4.2006, cancelling the allotment letter in favor of the petitioner, the original allotment letter dated 14.6.2005 issued by the respondent/MCD to the petitioner is restored. At the same time, the respondent/MCD is directed to allot to respondent No. 2, within a period of four weeks, any of the vacant Type-IV flats on the ground floor either at 10, Rajpur Road, 14, Rajpur Road or in the nearby vicinity of Model Town and Naniwala Bagh, as specified in the list of vacant flats furnished to the court, but in accordance with the extant Rules relating to housing accommodation and in terms of the discussion hereinabove. Upon receipt of the allotment letter, the respondent No. 2 shall hand over to the MCD, the vacant possession of the Type-V flat bearing No. D-1/6, 10 Rajpur Road, Delhi within a period of two months thereafter, for the MCD to immediately thereafter, hand over the same in turn, to the petitioner.

39. The writ petition is allowed as above, with costs of Rs. 5,000/- imposed on the respondent No. 1/MCD.

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